

Department of Justice.

"Such requirement would, in practical effect, often force the Government to prove anew the very antitrust violation the court's decree sought to remedy.

"Contempt, it seems clear, may largely turn on the intent and meaning of that judgment which the court, along with the parties, fashioned. From this it follows that decision on the contempt question may require intimate knowledge of the very facts and issues involved in the original antitrust action. Certainly the judge who, along with the parties, went through a trial and formulated the decree, is better able to decide such questions than a jury.

"Indeed, were a jury to decide criminal contempt issues, major portions of the evidence in any original antitrust litigation might well have to be introduced for a second time. * * *

"Finally, even if the Government waded through a criminal contempt jury trial, and the jury found defendants guilty, the pending jury trial amendment would curb those fines which a court could impose on guilty individuals. Thus the Senate-accepted provision specified that in case the accused is a natural person, the fine to be paid shall not exceed the sum of \$1,000 * * * in the Schine case, for example, one individual was fined \$25,000, and all other individuals fined \$5,000 apiece. Beyond that, this \$1,000 limit hardly seems consistent with Congress' recent action in upping Sherman Act maximum fines to \$50,000. It is illogical to permit a court to fine an individual up to \$50,000 for a Sherman Act violation and then limit to \$1,000 that fine which a court could impose for transgressing a civil decree which could grow out of the very same violation."

G. Office of Legal Counsel

The Office of Legal Counsel of the Department indicated that the Amendment would also have a harmful effect on contempt proceedings in the Supreme Court and Courts of Appeals. It concluded:

"Since the 'jury-trial amendment' to the Civil Rights Bill applies to all criminal contempt proceedings for violation of orders of 'any court of the United States or any court of the District of Columbia', the amendment plainly covers the Supreme Court of the United States and the eleven federal Courts of Appeals. In all criminal contempt proceedings in those courts for violation of their own orders--except where the contempt was committed in or near the presence of the court, or by a court officer--a jury trial would be required by the bill as it now stands.

"1. The Supreme Court customarily issues, each year, various kinds of stay or injunctive orders, for the purpose of preserving its jurisdiction pending a decision in a case. If those orders are violated, criminal contempt proceedings can be instituted by the Court to punish the violator. Up to now, it has not been necessary to provide a jury trial. Under the Bill, a jury trial will be mandatory. * * *

